

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. RCRA-05-2013-0013
)	
Meleen Corporation)	Proceeding to Assess a Civil Penalty and
38666 Highway 169)	Issue a Compliance Order Under Section
Onamia, Minnesota 56359)	9006 of the Resource Conservation and
)	Recovery Act, 42 U.S.C. § 6991e
Respondent.)	
_____)	

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

1. Complainant, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5, brought this administrative action seeking a civil penalty under Section 9006(d) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6991e(d), and a compliance order under Section 9006(a) of RCRA, 42 U.S.C. § 6991e(a).

2. On September 25, 2013, U.S. EPA filed the Complaint and Compliance Order (Complaint) in this action against the Respondent, Meleen Corporation. The Complaint alleges that Respondent violated Section 9003 of RCRA Subtitle I, 42 U.S.C. § 6991b, and the Underground Storage Tank (UST) regulations promulgated thereunder, at its facility located at 38666 Highway 169, Onamia, Mille Lacs County, Minnesota, known as “Meleen’s Sports Center”, where four petroleum USTs are located.

3. Specifically, the Complaint alleges that Respondent failed to: (1) operate and maintain its corrosion protection system to continuously provide corrosion protection to the metal components of that portion of each tank and piping that routinely contain regulated substances and are in contact with the ground, in violation of 40 C.F.R. § 280.31(a); (2) retest its

corrosion protection system within six months following repair, in violation of 40 C.F.R. § 280.33(e); (3) monitor its petroleum tanks at least every 30 days for releases, in violation of 40 C.F.R. § 280.41(a); and (4) provide release detection testing for its underground piping system, in violation of 40 C.F.R. § 280.41(b).

4. The Complaint also required Respondent to demonstrate that: (1) the corrosion protection associated with the piping for all four UST systems has been tested and operational in accordance with 40 C.F.R. § 208.33, (2) the automatic tank gauge is conducting 30-day release detection in accordance with 40 C.F.R. § 280.41(a), (3) the automatic line leak detector for each UST system has undergone and passed a functionality test in accordance with 40 C.F.R. § 280.44(a), and (4) the piping for each UST system has undergone and passed a line tightness test in accordance with 40 C.F.R. § 280.44(b).

5. Respondent filed an Answer on October 21, 2013, and requested a hearing under Section 9006(b) of RCRA, 42 U.S.C. § 6991e(b), and 40 C.F.R. § 22.15.

6. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18(d) and desire to settle the action initiated by the Complaint. Accordingly, before any testimony has been taken on the pleadings, and without any admission of violation, or adjudication of any issue of fact or law, Complainant and Respondent have agreed to the execution of this Consent Agreement and Final Order (CAFO), and Respondent hereby agrees to comply with the terms of this CAFO.

Stipulations

7. Respondent admits the jurisdictional allegations in the Complaint and neither admits nor denies the factual allegations in the Complaint, other than those admitted in the Answer.

8. Respondent waives any right to contest the allegations in the Complaint and its right to appeal this CAFO.

9. Respondent certifies that it is complying fully with the provisions of RCRA, Subtitle I, 42 U.S.C. §§ 6991-6991m, and its implementing regulations at 40 C.F.R. Part 280, at the Meleen's Sports Center facility.

10. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

11. The parties agree that settling this action without further litigation, upon the terms of this CAFO, is in the public interest.

Civil Penalty

12. In consideration of the inability of Respondent to pay the proposed penalty, Complainant agrees to mitigate the proposed penalty of \$103,125 to Five Hundred Dollars (\$500).

13. Within 30 days after the effective date of this CAFO, Respondent must pay the \$500 civil penalty for the RCRA violations by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

For checks sent by regular U.S. Postal Service mail

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

For checks sent by express mail

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must state the title of this matter (Meleen Corporation) and the docket number of this CAFO.

14. A transmittal letter stating Respondent's name and the case docket number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Erin Galbraith (LR-8J)
RCRA Branch
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Kevin Chow (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

15. This civil penalty is not deductible for federal tax purposes.

16. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity,

amount, and appropriateness of the civil penalty are not reviewable in a collection action.

17. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

18. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the UST regulations and any other applicable federal, State, or local law.

Compliance Order

19. Based on the findings contained in the Consent Agreement, and based on authority in Section 9006(a) of SWDA, 42 U.S.C. § 6991e(a), Respondent hereby agrees and is ordered to comply with the following requirements:

a) Respondent shall continue to operate and maintain a corrosion protection system to provide continuous corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground, in accordance with 40 C.F.R. § 208.31(a). Respondent shall have the cathodic protection system at the Meleen's Sports Center facility inspected every three years, in accordance with 40 C.F.R. § 280.31(b). Respondent shall maintain all records of the

operation of the cathodic protection system (including the results of the last two inspections conducted under 40 C.F.R. § 280.31(b)), in accordance with 40 C.F.R. §§ 280.31(d) and 280.34.

b) Respondent shall continue to ensure that the automatic tank gauge is conducting 30-day release detection, in accordance with 40 C.F.R. § 280.41(a). Respondent shall maintain all records of the results of the release detection monitoring for at least one year, in accordance with 40 C.F.R. §§ 280.45(b) and 280.34.

c) Respondent shall continue to conduct a functionality test of each automatic line leak detector for each UST system on an annual basis, in accordance with 40 C.F.R. §§ 280.41(b)(1)(i) and 280.44(a). Respondent shall maintain all records of each annual automatic line leak detection test for at least one year, in accordance with 40 C.F.R. §§ 280.45(b) and 280.34.

d) Respondent shall continue to conduct a line tightness test of the piping for each UST system on annual basis, in accordance with 40 C.F.R. §§ 280.41(b)(1)(ii) and 280.44(b). Respondent shall maintain all records of each annual line tightness test for at least one year, in accordance with 40 C.F.R. §§ 280.45(b) and 280.34.

e) Respondent shall continue to provide U.S. EPA, and any federally-credentialed tribal inspector acting as a duly-designated representative or agent of U.S. EPA, access to the Meleen's Sports Center facility, in accordance with

Section 9005 of RCRA, 42 U.S.C. § 6991d, for the purposes set forth therein.

f) In the event that any UST or UST system at the Meleen's Sports Center facility is to be taken out of service, Respondent shall follow the requirements for temporary closure or permanent closure, assessments, and recordkeeping set forth in 40 C.F.R. Part 280, Subpart G, for each UST or UST system taken out of service.

g) Respondent shall maintain all records of any repairs of any UST or UST system for the remaining operating life of the UST or UST system, in accordance with 40 C.F.R. §§ 280.33(f) and 280.34.-

20. Respondent must maintain compliance with all requirements and prohibitions governing the storage of regulated substances in underground storage tank systems applicable to owners and/or operators of petroleum UST systems as codified at 40 C.F.R. Part 280.

General Provisions

21. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Complaint.

22. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

23. This CAFO does not affect Respondent's responsibility to comply with Subtitle I of RCRA and other applicable federal, State, local laws and permits.

24. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31, and U.S. EPA's "Penalty Guidance for Violations of UST Regulations" (OSWER Directive 9610.12, dated

November 14, 1990), as revised by U.S. EPA's memorandum titled "Revision to Adjusted Penalty Policy Matrices Package Issued November 16, 2009" (dated April 6, 2010).

25. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

26. Each party agrees to bear its own costs and attorney's fees in this action.

27. This CAFO constitutes the entire agreement between the parties.

Reservation of Rights

28. Notwithstanding any other provision of this CAFO, an enforcement action may be brought pursuant to Section 9003(h) of RCRA, 42 U.S.C. 6991b(h), or other statutory authority, should U.S. EPA find that the release of regulated substances from an UST may have occurred and implementation of any corrective action is needed to address such release.

29. U.S. EPA reserves the right to take enforcement action against Respondent for any future violations of RCRA Subtitle I, and the implementing regulations, and to enforce the terms and conditions of this CAFO.

30. Except as expressly provided herein, nothing in this CAFO shall constitute or be construed as prohibiting, altering, or in any way limiting the ability of U.S. EPA to seek any other remedies or sanctions, including the right to seek criminal enforcement or the right to initiate an action for imminent and substantial endangerment, available by virtue of Respondent's violation of this CAFO or of the statutes and regulations upon which this CAFO is based, or for Respondent's violation of any applicable provisions of law. Compliance with this CAFO shall not be a defense against any action subsequently commenced pursuant to federal laws and regulations administered by U.S. EPA, and it is the responsibility of the Respondent to

comply with such laws and regulations.

31. Except as expressly provided herein, nothing in this CAFO shall constitute or be construed as prohibiting, altering, or in any way limiting the ability of U.S. EPA to seek any other remedies or sanctions, including the right to seek criminal enforcement or the right to initiate an action for imminent and substantial endangerment, available by virtue of Respondent's violation of this CAFO or of the statutes and regulations upon which this CAFO is based, or for Respondent's violation of any applicable provisions of law. Compliance with this CAFO shall not be a defense against any action subsequently commenced pursuant to federal laws and regulations administered by U.S. EPA, and it is the responsibility of the Respondent to comply with such laws and regulations.

32. Except as expressly provided herein, nothing in this CAFO shall constitute, a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to Respondent's management of the USTs located at the Meleen's Sports Center facility.

Parties Bound

33. This CAFO shall be binding upon Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, agents, and all persons, including independent contractors, contractors, and consultants acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CAFO.

34. No change in ownership, partnership, corporate, or legal status relating to the

Meleen's Sports Center facility will in any way alter Respondent's obligations and responsibilities under this CAFO.

Effective Date

35. The effective date of this CAFO shall be date on which the CAFO is filed with the Regional Hearing Clerk.

Meleen Corporation, Respondent

Date

Mr. Paul Meleen
President
Meleen Corporation

United States Environmental Protection Agency, Complainant

Date

Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Meleen Corporation
38666 Highway 169
Onamia, Minnesota 56359
Docket No. RCRA-05-2013-0013

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date

Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

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Meleen Corporation
38666 Highway 169
Onamia, Minnesota 56359
Docket No. RCRA-05-2013-0013

CERTIFICATE OF SERVICE

I, _____, hereby certify that I delivered a copy of the foregoing Consent Agreement and Final Order, Docket No. RCRA-05-2013-0013, to the person designated below, on the date below, by depositing it in the U.S. Mail, certified-return receipt requested, postage prepaid, at Chicago, Illinois, in an envelope addressed to:

Mr. Paul Meleen
Meleen Corporation
Meleen's Sports Center
Post Office Box 332
Onamia, Minnesota 56359

I have further filed the original and one copy of the Consent Agreement and Final Order and this Certificate of Service in the Office of the Regional Hearing Clerk, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, on the date below.

Dated this ____ day of _____, 2014.

Erin Galbraith, UST Enforcement Officer
RCRA Branch
U.S. EPA, Region 5